Hassnar bin Hj MP Ebrahim @ Asainar v Attorney General State of Sabah & Ors

HIGH COURT (SANDAKAN) — APPLICATION FOR JUDICIAL REVIEW NO S(25)–12 OF 2001
LINTON ALBERT J
2 MARCH 2005

Civil Procedure — Affidavit — Failure to file — Whether defendants required to file requisite affidavits in opposition in cases where there was injustice and abuse of the process of court

Civil Procedure — Parties — Unworthy litigants — Judicial process must be protected from abuse by busy-bodies cranks and other mischief-makers — Whether court should use inherent jurisdiction to prevent injustice and abuse of process of court —Rules of the High Court 1980 O 92 r 4

The applicant filed this application seeking *inter alia* declarations, certiorari, mandamus and injunction coupled with a host of consequential reliefs. The applicant's affidavit contained unfounded allegations of abuse of native certificates. Reference was also made to several letters addressed to the State Attorney General consisting of personal attacks and using profane language and letters addressed to every relevant official in the state administration including the police department, containing undisguised threats and insinuations disparaging them. The applicant was claiming to put right the perceived wrongs suffered by certain land applicants, more than half of them were dead. The applicant claimed to be the beneficial owner of all the native lands. However, all those lands had been duly transferred to the seventh respondent who was of chinese origin, but who had been issued with a native certificate pursuant to the relevant state enactment before the transfers were effected. The applicant sought to have the native certificate revoked and the land register rectified in his favour on unfounded allegations of fraud and forgery and in the process demeaning, disparaging and threatening everyone who crossed his path because none acceded to his unreasonable demands, for good reasons.

Held, dismissing the application with costs to be taxed unless agreed:

(1) The judicial process must be protected from abuse by busy-bodies cranks and other mischief-makers (see para 2).

(2) The second, third, fourth and fifth respondents' failure to respond by filing the requisite affidavits in opposition did not merit consideration because in the light of the abuse they had to endure, they were perfectly justified in refusing to dignify the applicant's application with a response (see para 3).

(3) If there are occasions where the court could and should use its inherent jurisdiction under O 92 r 4 of the Rules of the High Court 1980 to

prevent injustice and abuse of the process of the court with full force without recourse to authority, here is one such occasion (see para 3).

[**Bahasa Malaysia summary**

Pemohon telah memfailkan permohonan ini untuk menuntut *inter alia* deklarasi-deklarasi, certiorari, mandamus dan injunksi berserta dengan pelbagai lagi relif sampingan. Afidavit pemohon telah mengandungi tuduhan-tuduhan yang tidak berasas mengenai penyalahgunaan sijil-sijil penduduk asli. Rujukan juga telah dibuat kepada surat-surat yang dialamatkan kepada Peguam Besar Negeri yang mengandungi kecaman peribadi dan menggunakan kata-kata carut dan juga surat-surat yang dialamatkan kepada semua pegawai yang berkenaan di dalam pentadbiran negeri termasuk jabatan polis, yang mengandungi ancaman-ancaman yang nyata dan sindiran yang menghina mereka. Pemohon menuntut untuk membela kesalahan-kesalahan yang dikatakannya telah dilakukan ke atas beberapa orang pemohon tanah, lebih setengah daripada yang mana telah meninggal dunia. Pemohon mengatakan bahawa ia ialah pemilik benefisial bagi tanah-tanah penduduk asli tersebut. Walau bagaimanapun, kesemua tanah tersebut telah dipindah milik secara sah kepada responden ketujuh yang berbangsa cina, tetapi yang telah diberikan sijil penduduk asli di bawah enakmen negeri yang berkenaan sebelum pindah milik tersebut disempurnakan. Pemohon telah menuntut supaya sijil penduduk asli tersebut dibatalkan dan daftar tanah diperbetulkan berpihak kepadanya berdasarkan tuduhan-tuduhan fraud dan pemalsuan yang tidak berasas dan pada masa yang sama ia telah merendahkan, menghina serta mengancam semua orang yang ditemuinya kerana tiada siapa yang bersetuju kepada permintaan-permintaannya yang tidak munasabah itu, atas alasan yang baik.

Diputuskan, menolak permohonan itu dengan kos untuk ditaksirkan kecuali sekiranya dipersetujui:

(1) Proses kehakiman mesti dilindungi daripada penyalahgunaan oleh orang yang suka mengambil tahu hal-hal orang lain, orang yang berperangai pelik dan lain-lain orang yang suka membangkitkan kekacauan (lihat perenggan 2).

(2) Kegagalan responden-responden kedua, ketiga, keempat dan kelima untuk menjawab dengan memfailkan afidavit-afidavit balasan yang berkenaan tidak perlu dipertimbangkan kerana memandangkan penghinaan yang telah mereka terpaksa harungi, adalah wajar bagi mereka untuk enggan memuliakan permohonan pemohon dengan jawapan (lihat perenggan 3).

(3) Sekiranya terdapat keadaan di mana mahkamah boleh dan patut menggunakan bidangkuasanya yang sedia ada di bawah A 92 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk menghalang ketidakadilan dan penyalahgunaan proses mahkamah dengan kekuatan yang sepenuhnya tanpa pertolongan autoriti-autoriti, ini adalah satu keadaan yang sedemikian (lihat perenggan 3).

Notes

For cases on parties generally, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4150–4366.
For cases on affidavits generally, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 274–421.

Cases referred to

United Engineers (M) Bhd v Lim Kit Siang [1988] 2 MLJ 12 (refd)

Legislation referred to

Rules of the High Court 1980 O 18 r 19, O 92 r 4

Ridwandeen Borhan (Ansari & Co) for the applicant.
Halim Hanafiah (State Attorney General's Chambers) for the second, third, fourth and fifth respondents.
Shakinur Ain (Peter Lo & Co) for the sixth and seventh respondents.

Linton Albert J:

[1] This was an application filed by the applicant himself. He asked for a motley array of reliefs which included declarations, certiorari mandamus and injunction coupled with a host of consequential reliefs. The application was supported by an affidavit affirmed by the applicant himself accompanied by a barrage of documents and correspondences covering a period of more than two decades. The affidavit contained references a letter addressed to the then chief minister of Sabah through which he launched a diatribe against the state government on unfounded allegations of abuse of native certificates. Reference was also made to several letters addressed to the state attorney-general consisting of personal attacks and using language too profane to put into print, and letters addressed to practically every relevant official in the state administration including the police department, containing undisguised threats and not so subtle insinuations disparaging them. Not even a tuan imam could escape the ferocity of the applicant's wrath because a terse letter addressed to the tuan imam of Majlis Daerah Beluran questioning the propriety of the religious leader's involvement in the issuance of a native certificate to the seventh respondent also featured in this application. So much for the deplorable circumstances which feature in these proceedings which bring me to the question of the applicant's alleged interest, probably the only attribute that gives the applicant the right to appear and be heard.

[2] The applicant is a community leader and businessman whose self-proclaimed concern for 33 erstwhile successful land applicants led to his quest to put right the perceived wrongs suffered by them. His benefaction extended to their graves because more than half of them have since departed from this world. Ironically, the applicant now claims to have benefitted from his so-called

concern for the land applicants who, according to the applicant were the alleged victims of fraud and forgery perpetrated by the sixth and seventh respondents. The applicant now claims to be the beneficial owner of all the lands they had successfully applied for by reason of powers of attorney obtained from those who are still alive and letters of administration issued to him in respect of those who have died. All those lands which altogether are now worth in excess of RM1 million, according to the applicant, were in fact issued with title deeds and accompanied with the appropriate document executed by the sixth defendant, duly transferred to the seventh respondent who is of chinese origin, a fact which greatly incensed the applicant because but for the native certificate duly issued pursuant to the relevant state enactment, to the seventh respondent before the transfers were effected, the seventh respondent would not have been entitled to have all those lands registered in his own name; they were all native title lands. Hence, the applicant launched a relentless campaign to have the native certificate revoked and the land register rectified in his favour on unfounded allegations of fraud and forgery and in the process demeaning disparaging and threatening everyone who crossed his path because none acceded to his unreasonable demands, for good reasons. It is apt in these circumstances to paraphrase what was said by Salleh Abas LP in *United Engineers (M) Bhd v Lim Kit Siang* [1988] 2 MLJ 12 at p 29, that the judicial process must be protected from abuse by busy-bodies cranks and other mischief-makers. If there is a worse category of unworthy litigants I would have no difficulty in putting the applicant in that category.

[3] It is not surprising that the written submission of the applicant's counsel was as brief as it was devoid of authority; I can find none myself. His oblique but feeble suggestions based on the indisputable failure of the second, third, fourth and fifth respondents to respond by filing the requisite affidavits in opposition do not merit consideration. I hasten to add that in the light of the abuse they had to endure, they were perfectly justified in refusing to dignify the applicant's application with a response. By no stretch of the imagination would the court, in these circumstances allow any of the reliefs sought by the applicant. If there are occasions where the court could and should use its inherent jurisdiction under O 92 r 4 Rules of the High Court 1980 (the RHC) to prevent injustice and abuse of the process of the court with full force without recourse to authority, here is one such occasion. I have no hesitation, therefore, in dismissing the application against the second to the seventh respondents without further ado in just the same manner as the application against the first respondent was struck out under O 18 r 19 of the RHC at an earlier hearing. Application dismissed with costs to be taxed unless agreed.

Application dismissed.

Reported by Kanesh Sundrum